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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,521	04/19/2006	Hans Lambert	GTH-0002	3620

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CANTOR COLBURN, LLP  
20 Church Street  
22nd Floor  
Hartford, CT 06103

EXAMINER
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STUART, COLIN W

ART UNIT	PAPER NUMBER
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4177

NOTIFICATION DATE	DELIVERY MODE
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02/24/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,521	<b>Applicant(s)</b> LAMBERT, HANS	
	<b>Examiner</b> COLIN STUART	<b>Art Unit</b> 4177	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/19/06</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 uses the language: "position of a unit mouthing in the housing..." (ln. 3) and "position of a unit mouthing on another..." (ln. 4). The only mention of this language in the specification is in paragraph 0012 which states: "According to an additional preferred embodiment, one of the openings is arranged at the rotatable unit, said opening in a first rotational position of the unit mouthing in the housing on schematic of the absorption body and in a second rotational position mouthing on the other side of the absorption body." The examiner cannot ascertain the limitations of claim 3 with substantially the same claim language repeated in the specification.

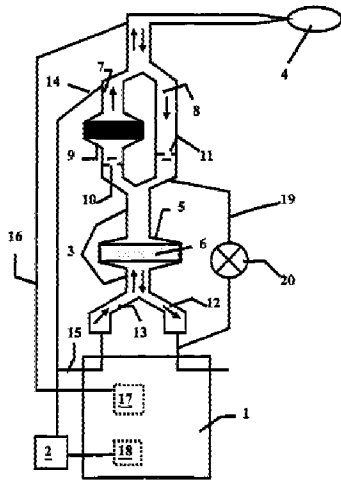
### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Psaros et al. (EP 0972534).**



**FIG. 1**

Fig. 1 of Psaros et al.

In regards to claim 1, Psaros teaches a device for recovering anaesthetics in anaesthetic treatment of a patient, which device comprises;

a housing (gas line 3; Psaros et al. Fig. 1)

having a first opening (branch 13 or 12 which is “connected to the respirator 1” (col. 2 ln. 42); Psaros et al. Fig. 1)

and a second opening (opening to deliver “respiration gases to and from a patient 4” (col. 2 ln. 25); Psaros et al. Fig. 1)

for formation of a flow path to and from the patient in the housing for a breathing medium, (Psaros et al. device is “for the delivery and the discharge of anaesthetic and respiration gases to and from a patient” (col. 2 ln. 24))

an absorption body arranged in the housing and having a capacity of absorbing and desorbing anaesthetics, (“an adsorption element 5, which contains an adsorption material 6” (col. 2 ln. 26); Psaros et al. Fig. 1)

valve means that is adjustable between an active position, in which a flow path to and from the patient passes through the absorption body, and a passive position, in which a flow path to and from the patient passes through the housing without passing through the absorption body, wherein the absorption body retains unchanged location in the housing in both valve positions. (valve 20; Psaros et al. Fig. 1 allows passage of gas “without passing through the adsorption element 5” (col. 3 ln. 5))

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Psaros et al. (EP 0972534) as applied to claim 1 above, and further in view of Hayek (4,930,498).**

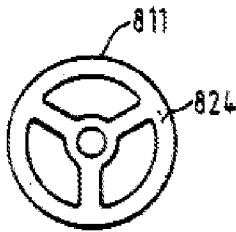


FIG. 10A.

Fig. 10A of Hayek

In regards to claim 2, Psaros et al. teaches a device according to claim 1, however Psaros et al is silent as to the valve means comprises a rotatable unit.

Hayek teaches a ventilator apparatus with a fluid control valve that is a rotatable unit. (circular disc 824; Fig. 10A of Hayek) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the valve taught by Psaros et al. (20) to be a rotatable unit in view of Hayek, because Hayek states that “such a valve may be used, for example, to provide alternately low and high pressures to a ventilator” (col. 6 ln. 1).

In regards to claim 3, modified Psaros et al. teaches a device according to claim 2, wherein one of said openings is arranged at the rotatable unit, said opening in a first rotational position of a unit mouthed in the housing on one side of the absorption body and in a second rotational position mouthed on another side of the absorption body. It is the examiner's position that the modified valve (824) applied to the device of Psaros

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et al. is capable of being placed at the opening 12 and achieve the same desired result of bypassing the anaesthetic absorption element (5).

**Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Psaros et al. (EP 0972534) as applied to claim 1 above, and further in view of Werner et al. (5,044,361).**

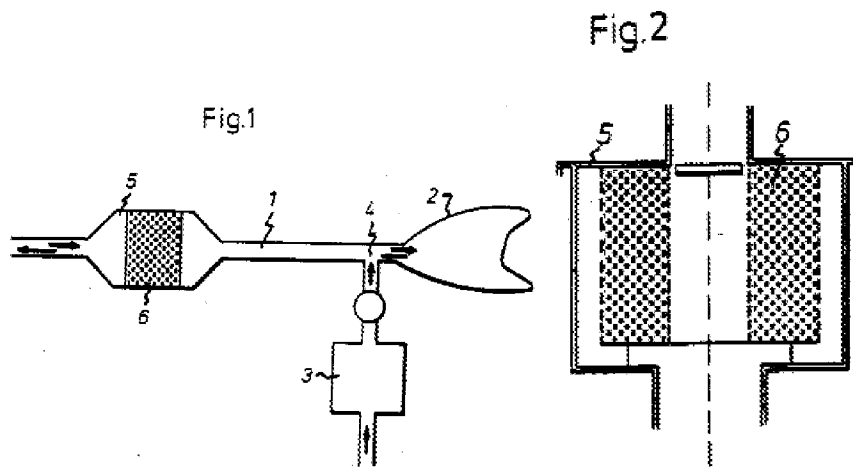


Fig. 1 of Werner et al.

Fig. 2 of Werner et al.

In regards to claim 4, modified Psaros et al. teaches a device according to claim 1, however is silent as to the housing is in the form of a box having a height that is smaller than a smallest extension thereof transverse to the height, wherein the absorption body is plate-shaped and is in the active position thereof substantially perpendicular to the height, and wherein each opening has a flow direction that is substantially parallel to the absorption body.

Werner et al. teaches an apparatus for reuse of anaesthetics with substantially similar structure as Psaros et al. Werner et al. teaches a adsorption filter (5) with

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adsorption material (6) in the box shape as claimed. (see Werner et al.: Fig. 1) The absorption body is plate-shaped and perpendicular to the height. (See Fig. 2, note that height is in the horizontal direction) It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the filter housing of Psaros et al. in view of Werner et al, because Werner et al. states that filter (5) allows for "reuse of anesthetics by which it is possible, at reasonable costs, to utilize high-priced anesthetics" (col. 1 ln. 60).

In regards to claim 5, modified Psaros et al. teaches a device according to claim 1, however is silent to the two flow paths are concentrically arranged in relation to each other. Werner et al. teaches an alternative setup of the adsorption filter (5) in Fig. 2. Substituting this arrangement of the filter in modified Psaros et al. with the disc valve taught by Hayek would arrange the two flow paths concentrically as claimed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the arrangement of the filter inside the housing of modified Psaros et al. in view of Werner et al., because Werner et al. states that the arrangement taught allows "ingoing and outgoing gas flow is compelled to pass through the adsorption material" (col. 2 ln. 46).

In regards to claim 6, modified Psaros et al. teaches a device according to claim 5, wherein the absorption body is arranged in the flow path through the housing. The filter arrangement taught by Werner et al. is in the flow path through the housing as



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claimed. (see Werner et al. Fig. 2) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the arrangement of the filter inside the housing of modified Psaros et al. in view of Werner et al., because Werner et al. states that the arrangement taught allows "ingoing and outgoing gas flow is compelled to pass through the adsorption material" (col. 2 ln. 46).

**Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Psaros et al. (EP 0972534) and Werner et al. (5,044,361) as applied to claim 6 above, and further in view of Heron (2003/0089116) and Hayek (4,930,498).**

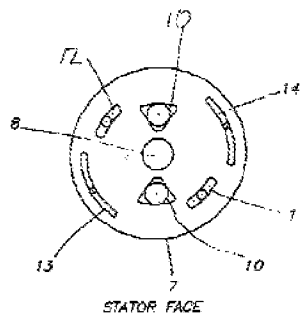
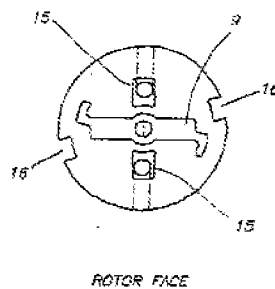


Figure 2

Fig. 2 of Heron



ROTOR FACE

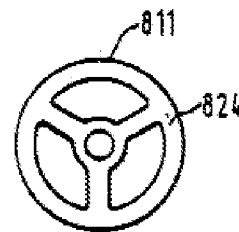


FIG. 10A.

Fig. 10A of Hayek

In regards to claim 7, modified Psaros et al. teaches a device according to claim 6, however is silent to the valve means comprises a first and a second unit rotatable in relation to each other and adjacent to each other, which first unit comprises an even number of sections distributed in a circumferential direction, each section comprising a wall member and an opening, where in every second section the opening is situated radially outside the wall member and in every second section the opening is situated

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radially inside the wall member, and which second unit comprises an even number of portions distributed in the circumferential direction, where every second portion comprises a fully covering wall and every second portion comprises an opening.

Heron and Hayek teach a rotary valve with the claimed limitations discussed in the paragraph above. The element on the left of Fig. 2 of Heron is the claimed first unit and circular disc valve 824 of Hayek (Fig. 10A) is the second unit as claimed. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the valve taught by Psaros et al. (20) with a rotatable first unit in view of Heron and a second unit in view of Hayek, because Heron states “wear of rotor ... is reduced” (para 0008) and Hayek states that “such a valve may be used, for example, to provide alternately low and high pressures to a ventilator” (col. 6 ln. 1).

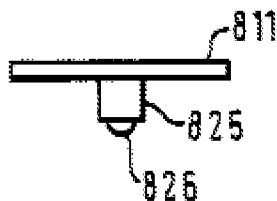


FIG. 10B.

In regards to claim 9, modified Psaros et al. teaches a device according to claim 7, wherein each of said units is of substantially conical form. Fig. 10B above is a profile of element 824 which is substantially conical in form as claimed.

**Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Psaros et al. (EP 0972534), Werner et al. (5,044,361), Heron (2003/0089116), and**

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**Hayek (4,930,498) as applied to claim 7 above, and further in view of Walton et al. (4,532,961).**

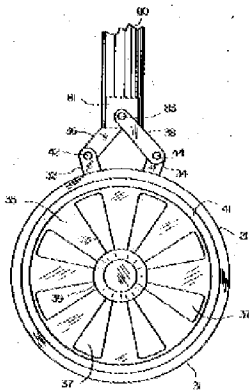


FIGURE 3

Walton et al.: Fig. 3

In regards to claim 8, modified Psaros et al. teaches a device according to claim 7, however is silent to the number of sections is eight or greater and the number of portions is equal to the number of sections, and each section and each portion are of substantially triangular shape and each opening and each wall member are of substantially triangular or trapezoidal shape.

Walton et al. teaches a similar rotatable valve with 8 sections as claimed. (See Fig. 3 with 8 ports (37)) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the substituted valves to have 8 sections in view of Walton et al., because Walton et al. states that the valve is “economical to manufacture and capable of use with a wide variety of fluids or gases in high pressure flowpaths” (col. 1 ln. 60).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are considered pertinent art: Linkner, Jr. (6,145,540), Pfeifer (5,950,518), and Spivey et al. (5,979,504).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN STUART whose telephone number is (571)270-7490. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Yao can be reached on 571-272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Michael C. Astorino/

Primary Examiner, Art Unit 3769

February 16, 2009